IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 36539 of 2003(Y)

PETITIONER:

RAJESH A.R., S/O. A.A.RAJAN,
AROKKARAN HOUSE, SITARAM MILL LANE,
PUNKUNNAM, THRISSUR DIST.

BY ADV. SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENTS:

1. **ASSISTANT SECRETARY,**
   THRISSUR CORPORATION ELECTRICITY WING, THRISSUR.

2. **SECRETARY,**
   THRISSUR CORPORATION, THRISSUR.

3. **THE DIRECTOR,**
   DIRECTORATE OF MUNICIPAL ADMINISTRATION,
   THIRUVANANTHAPURAM.

4. **STATE OF KERALA,**
   REP. BY THE SECRETARY, LOCAL SELF GOVERNMENT (B)
   DEPARTMENT, THIRUVANANTHAPURAM.

5. **KERALA STATE ELECTRICITY BOARD,**
   REP. BY ITS SECRETARY.

BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION for R1&R2
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH
SRI.A.SUDHI VASUDEVAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB for R5
BY GOVERNMENT PLEADER SMT. T.B. RAMANI for R3 & R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/092007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.36539/2003 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF APPLICATION DTD. 02/01/02.**

EXT.P2: **COPY OF THE LETTER BY 1ST RESPONDENT TO 3RD RESPONDENT DTD. 25/10/02.**

EXT.P3: **COPY OF THE LETTER BY 2ND RESPONDENT TO 3RD RESPONDENT DTD. 24/10/2002.**

EXT.P4: **COPY OF THE LETTER BY 3RD RESPONDENT TO 4TH RESPONDENT DTD. 14/11/2002.**

EXT.P5: **COPY OF G.O.(MS) 83/70/LAD OF GOVERNMENT DTD. 15/12/1970.**

EXT.P6: **COPY OF JUDGMENT DTD. 30/06/03 OF HON'BLE HIGH COURT.**

EXT.P7: **COPY OF ORDER PASSED BY 4TH RESPONDENT DTD. 20/10/2003.**

EXT.P8: **COPY OF NOTIFICATION DTD. 29/04/85.**

EXT.P9: **COPY OF LETTER ISSUED BY K.P.S.C. DTD. 01/06/2001.**

EXT.P10: **COPY OF ORDER NO.B8/15358/94 DTD. 02/08/2001 ISSUED BY K.P.S.C.**

EXT.P11: **COPY OF CERTIFICATE DTD. 19/01/05 BY M.C.H., THRISSUR.**

EXT.P12: **COPY OF PAGE 24 OF 'ELECTRICITY WORKER' OF DEC.'04.**

EXT.P13: **COPY OF B.O.(FB) NO.1222/2005 (ESTT II/1302/05) DTD. 19/04/05.**

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.36539 OF 2003

Dated this the 28th day of September, 2007

JUDGMENT

“C.R.”

The issue that arises for decision in this case is as to whether the regulations issued by the Kerala State Electricity Board, hereinafter the “Board”, to govern the service conditions of its employees, applicable to the employees in the Electricity Wing of the Thrissur Corporation, hereinafter, the “Corporation”.

2. Petitioner's father, while employed in the Electricity Wing of the Corporation, met with a motor accident on 5.9.2000, resulting in injuries that led to him being paid invalid pension. Thereafter, the petitioner applied on 2.1.2002 for appointment on compassionate grounds, referable to the invalid situation of his father. The Director of Municipal Administration recommended that request favourably on 14.11.2002. The Government rejected the request of the petitioner by the

impugned Ext.P7 order, passed after directions were issued by this Court for consideration of the claim of the petitioner on merits.

3. Petitioner challenges Ext.P7 order on the ground that the invalid state of the petitioner's father not being disputed, as per clause 7 of Ext.P8 Kerala State Electricity Board (Appointment of Dependants of Board employees who die in harness or are permanently disabled and are retiring on invalid pension) Regulations, 1985, hereinafter referred to as the “Regulations”, a dependent of a person who retires on invalid pension is entitled to be considered for compassionate appointment and the terms of those Regulations apply to the Corporation and its employees in terms of the provisions of Ext.P5 G.O.(MS) 83/70/LAD dated 15.12.1970. On such premise, it is contended that the terms and conditions of Ext.P7 having been made applicable to it by the Government, the Corporation is bound to provide compassionate appointment to the petitioner and the Government have acted illegally in refusing to concede to such right of the petitioner.

4. The Corporation takes the stand that it is not acceptable to the council of the Corporation to make any such appointment. This was its definite stand even before the Government, as is discernible from Ext.P7. The Government have also stated in Ext.P7 that there is no provision where a dependent of an invalid pensioner is provided compassionate appointment in Government service and that the Government do not intend to create a precedent in that regard.

5. The question that needs to be decided is as to whether the Corporation is bound by the Regulations issued by the Board.

6. Even under the Kerala Panchayat Act, 1960, Kerala Municipality Act, 1960 and the Kerala Municipal Corporation Act, 1961, the institutions constituted thereby were considered as bodies independent of the Government, subject to certain supervisory controls. With the passage of time, their status as mere statutory institutions metamorphosed into a constitutional status following the 73rd amendment to the Constitution, which came into force on 24.4.1993, providing part IX, which deals

exclusively with the Panchayats and Part IX A (a), that exclusively deals with Municipalities. By such exercise, as noticed in **Ravindran** v. **State of Kerala** [2006(1) KLT 427], those institutions have become constitutional institutions and their birth and existence are dependent on the mechanism provided for in the Constitution itself. All that was left to the States were to make laws regarding the composition of those institutions and other matters as are provided for in terms of those Chapters in the Constitution. As noticed in **Ravindran** (supra), local bodies had become weak and ineffective and it became necessary that they be tuned to perform effectively as vibrant democratic institutions of Self Government and it was therefore, that the 74th amendment of the Constitution was made. The Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994 were enacted insulating the Local Self Government Institutions from governmental interference as envisaged in the Constitution.

7. In the backdrop of what is noticed above in the constitutional and statutory context, it needs to be examined as

to whether Ext.P5 Government Order of 1970 binds the Corporation and still further, whether the terms of that G.O. are binding enough to impose on the Corporation such regulations as may be framed by the Board to govern the conditions of service of its employees.

8. A close reading of Ext.P5 would show that in 1970, the Government wanted the Corporation, then the Thrissur Municipality, to follow the staff pattern of the KSEB in so far as its Electricity Department is concerned. Accordingly, the then Thrissur Municipal council passed a resolution and placed a proposal before the Government, through the Director of Municipalities, regarding the fixation of staff strength adopting the pattern in the Board. The Government, thereupon, issued Ext.P5 stating that the qualifications and method of appointment prescribed for any posts in the Board would be applicable to the similar posts in the Electricity Department of Thrissur Municipality. The qualifications and method of appointment conceived in Ext.P5 G.O. are those which may go into making recruitment in the normal course.

9. Compassionate appointment is not a method of appointment or recruitment in the normal course. It is a process by which the employer extends an element of compassion to the immediate kith and kin of an employee whose demise while in service may require immediate succor for the family, in view of the unexpected death of the earning member. Still further, the guarantees of Articles 14 and 16 to the open market candidates who await consideration for recruitment in public employment have consistently and repeatedly been emphasised by the superior courts, including the Apex Court, to conclude that there can be no compassionate appointment in excess of the required bench mark of "absolute requirement to provide immediate succor" and there cannot be any further encroachment into the public employment through that channel. It has also to be noticed that compassionate appointments were conceived to be made when required, without awaiting for the occurrence of a vacancy. This concept further led to identifying a process of retaining such persons, by having them as supernumerary personnel holding on, to be earmarked against direct

recruitment as and when vacancy arises. In its gist, compassionate appointment is not one of those methods of appointment as are understood in the context of making and applying a general or special rule in relation to appointment into public service. Such a concept is not even discernible as one conceived of even by the makers of Ext.P5 Government Order, leave aside its constitutionality. Therefore, the provision in Ext.P5 that the qualification and method of appointment prescribed for appointments in the Board will be applicable to the same posts in the Electricity Wing of the Thrissur Municipality (now Corporation) does not take within its sweep any provision in the Board's Regulations to make a compassionate appointment.

10. That apart, as already noticed, the Corporation is an institution independent of the Board and the Government that status has necessarily to be conceded to even under the constitutional context emerging from the 73rd amendment. There is no compulsion on a licensee under the Electricity Laws to adopt the service conditions of yet another licensee. The

Corporation is the licensee in so far as the area where it supplies energy is concerned. No Board Regulation in relation to the service conditions would apply to the employees of the Corporation, unless the Corporation adopts it as a decision made by it. In the constitutional context and in the statutory context, Government have no authority whatsoever to impose upon the Corporation and its employees any of the service conditions which is not adopted by the Corporation, though they may be available among the service conditions of the employees of the Board.

11. The learned counsel for the petitioner attempted to further point out that there appears to be parity in the case of duties and responsibilities of the employees in the Electricity Wing of the Corporation and those of the Board. But, as rightly found by the Government on the basis of the contention of the Corporation, the employees of the Electricity Department of the Corporation work within certain area of the Corporation only and they do not have even the liability of transfer beyond the district of Thrissur. The work load of the entire establishment called the Electricity

Department of the Corporation, in comparison with that of the Board, is meager. Therefore, the mere fact that the nature of work of the employees may relate to supply of energy does not, as a necessary corollary, call for any equation between the employees of the Board and the employees of the Electricity Department of the Corporation. The Contention of apparent parity is rejected.

12. For the aforesaid reasons, the claim of the petitioner on the basis of Ext.P5 G.O. and Ext.P8 Regulations does not stand. The impugned Ext.P8 is not vitiated by any jurisdictional error or legal infirmity.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.